

AMENDED IN SENATE AUGUST 17, 1998

AMENDED IN SENATE JULY 16, 1998

AMENDED IN ASSEMBLY JUNE 25, 1998

AMENDED IN ASSEMBLY MAY 18, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 2816

**Introduced by Assembly Member Baugh
(Coauthor: Assembly Member Migden)**

April 15, 1998

An act to add Section 701.5 to the Penal Code, relating to minors, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2816, as amended, Baugh. Minors: informants.

Existing law authorizes a finding of probable cause to make an arrest without a warrant or to grant an arrest warrant or a search warrant, based upon information provided by an informant under certain circumstances.

This bill would prohibit any ~~law enforcement or correctional official~~ *peace officer or agent of a peace officer* from using a person ~~under the age of 15 years as a police 12 years of age or younger as a minor~~ informant, and from using a person under the age of 18 years as a ~~police~~ *minor* informant, except as authorized pursuant to the Stop Tobacco Access to Kids Enforcement Act, unless ~~a judicial officer explains to the~~

~~minor and the minor's parent or guardian the nature of the minor's participation as a police informant, its procedures, and possible consequences, and the judicial officer and the minor's parent or guardian consent to the use of the minor as a police informant~~ *the peace officer or agent of a peace officer has obtained an order from the court authorizing the minor's cooperation. The bill would require the court, prior to issuing such an order, and after specified conditions are satisfied, to make a finding that the agreement to act as a minor informant is voluntary and is being entered into knowingly and intelligently.*

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 701.5 is added to the Penal Code,
2 to read:

3 701.5. (a) Notwithstanding subdivision (b), ~~no law~~
4 ~~enforcement or correctional official shall use a person~~
5 ~~under the age of 15 years as a police informant.~~

6 ~~(b) No law enforcement or correctional official shall~~
7 ~~peace officer or agent of a peace officer shall use a person~~
8 ~~who is 12 years of age or younger as a minor informant.~~

9 ~~(b) No peace officer or agent of a peace officer shall~~
10 ~~use a person under the age of 18 years as a police minor~~
11 ~~informant, except as authorized pursuant to the Stop~~
12 ~~Tobacco Access to Kids Enforcement Act (Division 8.5~~
13 ~~(commencing with Section 22950) of the Business and~~
14 ~~Professions Code) for the purposes of that act, unless all~~
15 ~~of the following conditions have been met:~~

16 ~~(1) A judicial officer explains to the minor and the~~
17 ~~minor's parent or guardian, provided that the parent or~~
18 ~~guardian is not a suspect in the investigation, the nature~~
19 ~~of the minor's participation as a police informant, its~~
20 ~~procedures, and possible consequences.~~

21 ~~(2) The judicial officer reviews the minor's situation~~
22 ~~and options, and after advising the minor and the minor's~~

~~parent or guardian thereof, provided that the parent or guardian is not a suspect in the investigation, consents to the use of the minor as a police informant.~~

~~(3) The minor's parent or guardian consents to the use of the minor as a police informant. In the event that the minor's parent or guardian is a suspect in the investigation or when the official shows exigent circumstances, a judicial officer's consent alone shall be sufficient.~~

~~(e) the peace officer or agent of a peace officer has obtained an order from the court authorizing the minor's cooperation.~~

~~(c) Prior to issuing any order pursuant to subdivision (b), the court shall find, after consideration of (1) the age and maturity of the minor, (2) the gravity of the minor's alleged offense, (3) the safety of the public, and (4) the interests of justice, that the agreement to act as a minor informant is voluntary and is being entered into knowingly and intelligently.~~

~~(d) Prior to the court making the finding required in subdivision (c), all of the following conditions shall be satisfied:~~

~~(1) The court has found probable cause that the minor committed the alleged offense. The finding of probable cause shall only be for the purpose of issuing the order pursuant to subdivision (b), and shall not prejudice the minor in any future proceedings.~~

~~(2) The court has advised the minor of the mandatory minimum and maximum sentence for the alleged offense.~~

~~(3) The court has disclosed the benefit the minor will obtain by cooperating with the peace officer or agent of a peace officer.~~

~~(4) The minor's parent or guardian has consented to the agreement by the minor unless the parent or guardian is a suspect in the criminal investigation.~~

~~(e) For purposes of this section,—“police “minor informant” means a minor who participates, on behalf of a law enforcement agency, in a prearranged transaction or series of prearranged transactions with direct face-to-face contact with any party, when the minor's~~

1 participation in the transaction is for the purpose of
2 obtaining or attempting to obtain evidence of illegal
3 activity by a third party.

4 SEC. 2. This act is an urgency statute necessary for the
5 immediate preservation of the public peace, health, or
6 safety within the meaning of Article IV of the
7 Constitution and shall go into immediate effect. The facts
8 constituting the necessity are:

9 In order to ensure that minors are no longer placed in
10 a position of danger of injury or death as a result of being
11 used as an informant, it is necessary that this act take
12 effect immediately.

